

attendance.² Plaintiff argues that because engine codes and the rear bumper may be permanently altered, this is a “destructive” inspection. FCA states that the inspection is “non-destructive” because no engine codes will be altered, and FCA will re-install the bumper to its as-found condition.

Destructive testing is “any testing of a chattel which results in its alteration or destruction.” Annotation, *Propriety of Discovery Order Permitting “Destructive Testing” of Chattel in Civil Case*, 11 A.L.R.4th 1245 (2004); see, e.g., *McCuistian v. LG Elecs., U.S.A., Inc.*, No. 15-cv-279-JA-GMB, 2016 WL 1690420, at *1 n.2 (M.D. Ala. Apr. 27, 2016) (identifying inspection as destructive where certain parts of smoke detector had to be removed); *Bostic v. Ammar’s Inc.*, No. 03-146-ART, 2011 WL 251009, at *3-5 (E.D. Ky. Jan. 26, 2011) (treating disassembly of chair as destructive).

The Court finds the possibility of engine code or bumper alteration sufficient to qualify this inspection as “destructive.” FCA has not shown that there are adequate safeguards outside of Plaintiff’s presence during inspection that will sufficiently minimize the potential prejudice to Plaintiff. Accordingly, Plaintiff and Plaintiff’s counsel shall be allowed to be present at the July 13, 2016, vehicle inspection.

IT IS SO ORDERED.

Dated: July 5, 2016

/s/ Greg Kays

GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

²Plaintiff and FCA agree that where destructive testing is proposed, the non-movant and his counsel are typically entitled to attend the inspection. See, e.g., *Ramos v. Carter Express, Inc.*, 292 F.R.D. 406, 409 (S.D. Tex. 2013) (collecting cases). The parties also agree that, “[i]n contrast, where courts compel production of materials for non-destructive testing, they habitually refuse to allow the presence of an opposing party.” *Id.*; see also *Shoemaker v. Gen. Motors Corp.*, 154 F.R.D. 235, 236 (W.D. Mo. 1994) (refusing to allow plaintiff to be present during non-destructive testing because “the presence of plaintiff’s counsel at the tests will reveal protected attorney work product and consulting expert information”).